

IDRISS (Migration) [2017] AATA 1654 (15 September 2017)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mrs OMayma Mohamed Idriss
VISA APPLICANT:	Mr Mohamed Suliman Salih Ismail
CASE NUMBER:	1616934
DIBP REFERENCE(S):	BCC2016/1130401
MEMBER:	Meena Sripathy
DATE:	15 September 2017
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Statement made on 15 September 2017 at 11:18am

CATCHWORDS

Migration – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional) – Genuine and continuing relationship – Application delayed 4 years after marriage – Inconsistent witness evidence – Varied purposes for money transfers – Varied accounts of time together – Limited evidence of regular contact – Social media communication

LEGISLATION

1. *Migration Act 1958*, ss 5F, 65
Migration Regulation 1994, Schedule 2 cl 309.211, r 1.15A

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 7 August 2016 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant applied for the visa on 15 March 2016 on the basis of his relationship with his sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.309.211(2)(a).
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211(2)(a) because the delegate was not satisfied the visa applicant was the spouse of the sponsor at time of application, having regard to the limited evidence of financial, social or household aspects of the relationship. The delegate placed significant weight on the brevity of time spent together by the visa applicant and sponsor since they met, and also referred to the lack of detail in the visa applicant's responses at interview to questions about the sponsor.
5. The review applicant appeared before the Tribunal on 24 July 2017 and 18 August 2017 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant. The review applicant was represented in relation to the review by her registered migration agent.
6. For the following reasons, the Tribunal has concluded that decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. Information in the application form indicates the visa applicant is a 26 year old man of Sudanese nationality. He has parents, one brother and three sisters, all younger, residing in Sudan. He is sponsored for the application by the review applicant, who is a 24 year old Australian citizen. She has parents, one older sister and two younger sisters, all residing in Australia. The parties met on 27 November 2011 in Khartoum, Sudan and decided to commit to a shared life together on 27 December 2011. They married on 30 January 2012 in Khartoum, and the parties lived together from that date until the review applicant returned to Australia on 22 February 2012 to continue her studies. The review applicant returned to Sudan from January – February 2015 and spent another one month with the visa applicant. Neither party has declared any previous relationships.
8. The following documents in support were included with the application: Marriage Document evidencing marriage between the parties on 30 January 2012 in Khartoum; completed Form 80; Two Form 888 supporting Statutory Declarations from Abdallah Suliman Abdelrasoul, relative of the parties and Mohammed Mohammed, friend of the review applicant's father; statements from the review applicant and visa applicant about the relationship; support letter from Mohammed Elhag, Chairman of the Darfur Community Social & Cultural Association NSW; evidence of review applicant's travel document for Australia indicating her arrival 19 December 2005; review applicant's Certificate of Citizenship granted 17 September 2008 and Australian passport; visa applicant's Sudanese passport.

9. Departmental file notes indicate the visa applicant was interviewed on 18 May 2016. He indicated at the interview that they first knew each other 10 years ago and first met at airport in 2011. He is her cousin (their fathers are brothers) and the marriage was arranged by the family. He stated they married on 30 January 2012, and had a wedding party the same day as the contract was signed. He said it was a large wedding with about 200 people. It was the same day her sister married her husband. Department file records mention the sister sponsored her husband for a Partner visa in 2013.
10. The Department's file notes indicate the officer's concerns that the visa applicant did not present well at interview, even allowing for his youth and lack of articulacy. It was noted that he consulted documents in his possession before answering questions about the sponsor's age and date of marriage. The delegate indicated concerns about the lack of supporting evidence, absence of written statements from parties' parents or siblings or other evidence of social recognition, 3 year delay between sponsor's visits and absence of photo evidence of her last visit and the delay in lodging the application three years after their marriage. The application was refused on the basis of lack of satisfaction the parties were in a genuine and ongoing relationship.
11. Before the Tribunal the following further evidence has been submitted:
 - A submission from the review applicant's representative;
 - Statutory Declaration from the visa applicant dated 14 July 2017;
 - Form 888 Statutory Declarations from the review applicant's parents;
 - Statements from the visa applicant's parents;
 - Form 888 Statutory Declarations from various friends of the review applicant including Mahmoud Hamed, Adam Ali, Altigani Bilal, Hadar Bensaul, Mosa Mohamed, Babiker Suliman, Babker Abdalla;
 - Supporting statements from friends of the visa applicant, including Najim Abdalla, Mohamed Hassan, Hob Isaac, Soliman Ismael;
 - Statutory Declaration from the review applicant stating that she used her sister Aya's Facebook account to chat and communicate with her husband because she did not have an account;
 - Evidence of communication via Facebook messenger referring to 'Ayoya Awod';
 - Phone records covering the period April – September 2016 evidencing communication between the parties
12. At the hearing the review applicant gave the following evidence. She lives with her parents and 4 siblings and has lived with these family members since her arrival in Australia in 2005. Apart from her immediate family, she has no other blood relatives in Australia. In Sudan she has a large extended family, including grandparents, and many aunts, uncles and cousins on both her maternal and paternal side. She is currently studying a Certificate IV in Disability and has 6 months left to finish this course. Prior to this course she completed a Diploma in Business, which she did from 2012 to 2015. She studied high school to year 11. She has never worked. She is in receipt of Centrelink income support payments, independent rate. She informed Centrelink about her marriage when she returned from overseas in 2012 after she married the visa applicant.

13. The review applicant travelled to Sudan with her mother and two sisters, Aya and Fatima, in late 2011 to visit family. She did not plan to marry on this trip, but it ended up this way. She met the visa applicant in person when he picked her and her family members up from the airport. Prior to that she had spoken to him on the phone over the years. He is her first cousin, being the son of her mother's younger brother. He is also related to her father because her parents are first cousins themselves.
14. The review applicant confirmed that her sister Aya was dating her now ex-husband Mubarak, for some two years prior to their visit to Sudan at that time. Mubarak is her father's uncle. They married on the same day as the review applicant and visa applicant. Mubarak was sponsored for a partner visa by Aya and he arrived in Australia in 2013. They had a child together, but the relationship broke down and he left the house. Aya and her son continue to live with the review applicant and the rest of the family.
15. The review applicant provided the following evidence about the relationship with the visa applicant. They knew each other for some years through phone contact only. They met for the first time in person when the review applicant came to Sudan in 2011. The visa applicant revealed his feelings for the review applicant and she said she also liked him. He asked her if she would marry him. The review applicant sought permission from her parents. They agreed and the applicants decided to marry while she was there. The review applicant insisted the marriage was not arranged by her parents. They made their own decision to marry and the parents were agreeable. They did not force her to marry and did not put any pressure on her. They signed the marriage contract on 30 January 2012 and had the wedding party that same day. It was a joint marriage with her sister Aya. Their father was not present as he was in Australia with their other siblings. Her mother, aunts and uncles, the visa applicant's parents, grandparents and aunts and uncles all attended. In total there were around 500 people in attendance. The review applicant handed up a copy of the DVD of the wedding. The groom's side of the family covered the cost of the wedding. Her family contributed a small amount towards the food. After the wedding, in accordance with Sudanese culture, the review applicant stayed at the visa applicant's family's home until she returned to Australia.
16. She came back to Australia to commence study. The plan when she left Sudan was that she would return to complete her study. At the end of 2014, she made another visit to Sudan to see the visa applicant. She was at this time still studying but she took a break from her study. She stayed about 4 weeks, again at the visa applicant's family's house. She travelled with her mother, Fatima and Amira. They stayed with their grandmother. On this visit, the review applicant and visa applicant travelled to Damazin to visit the visa applicant's relatives. They travelled by bus and stayed about one week. The rest of the time they went out for meals, to the park, to movies and restaurants. The review applicant told the Tribunal the visa applicant is a farmer. He works on his father's land, growing wheat, sesame and peanuts. He studied at school to Year 11 level. He was still studying at school when they married in 2012. He completed his schooling in 2013 and since then he works on the land as a farmer. He left school and started working to save money for this application.
17. The Tribunal asked why they did not make this application for 4 years after they married. She said they did not have the money to lodge the application and also she was studying. She saved money from her Centrelink payments and her parents contributed to the application fee also. The visa applicant helped to pay for the review application fee. The Tribunal asked how her sister was able to lodge her husband's application so much sooner. She said her sister had completed her study by the time she married, and had income from employment and her husband was also working. They had the funds to apply earlier.
18. The Tribunal asked the review applicant about the financial arrangements between her and the visa applicant. She said she has sent him money on two occasions, \$200 each time.

The first time the money was used by him to clear his land. The second amount of money was a gift from the review applicant to the visa applicant. The visa applicant sends her presents through friends who are travelling. He has sent her books (love stories) and religious texts and also music cds of her favourite Egyptian singer, Tamer Hosny. She has sent him a gift of John Walker perfume.

19. The Tribunal asked the review applicant about friends of the visa applicant that she has met or knows about. She named several of his best friends, including Najim and Mohammad Hasan who gave statements in support. She stated that she met them when she stayed with the visa applicant.
20. When they are not together they communicate by phone and Facebook messenger. She uses her sister's Facebook account because she does not have her own Facebook page because she doesn't like social media. They discuss being together in the future and raising money to buy their own place. He will study English initially and then he would like to work in farming. They may look to move to the countryside. When asked to relate something personal they shared with each other, the review applicant recounted an incident about 2 years ago when he called her and told her he was depressed because of a disagreement he had with a friend. He sought her advice. She told him to apologise and she spoke with his friend to try and resolve it. She gave other examples of her seeking support from him regarding her studies and when she had an argument with her friend and she sought his advice. The visa applicant asked her several months later whether things were okay with her friend. She said the visa applicant is frustrated with his younger brother because he is not working or studying. He has discussed with this her.

21. Evidence from the visa applicant

22. The Tribunal took oral evidence by phone from the visa applicant. The first hearing was adjourned when it became clear the interpreter had difficulties with the Sudanese dialect. A second hearing was arranged with a new Sudanese Arabic interpreter.
23. At the second hearing the visa applicant gave the following evidence. He said he lived with his parents and 4 siblings at home. He works on the farm. He was previously studying engineering but stopped because their living situation became difficult and he is the eldest son. He worked for a short period in a shop but he stopped that work and has only worked on the farm since ceasing study.
24. The visa applicant stated that he met the review applicant for the first time when she came to visit Sudan with her family in 2011. Before that they were in contact by telephone. The Tribunal asked if he had discussed his feelings for her with her before she travelled to Sudan. He said they had talked about their feelings for one another but he didn't tell her he wanted to marry her until after they met in person in Sudan. They made the decision to marry only after she came to Sudan. He said the purpose of her visit to Sudan was only to visit her relatives. Neither she nor her sister had a plan to marry during this visit. Her sister's decision to marry was also determined only after they came.
25. The visa applicant stated that his marriage to the review applicant was not arranged by the families. They decided to marry and then informed their parents who gave their approval.
26. He described the marriage. It was attended by his parents, siblings, the review applicant's mother and sister and many of their common relatives. The marriage was paid for by the groom's side in accordance with Sudanese traditions. After the wedding the review applicant stayed with him in a room at the family home until she returned to Australia.

27. They had no plan after the marriage. She returned because she was studying. She was studying accountancy. He believes she had started the accountancy course at that time and had not finished it. When asked if he is aware if she has finished her course now, he said she has not finished it yet. He believes she is still studying and also doing some work to earn money. When asked what work she does he said she works with elderly people and does any type of work to get money. He then said she doesn't tell him about the work she does but he understands that she does some work. When asked if she is studying now, he said she is studying Arabic language.
28. The review applicant came to Sudan at the end of 2014 with her mother and sisters, Amira and Fatima. They all stayed at his house which is very close to his grandmother's house. He then clarified that her mother and sisters stayed in a room at the grandmother's house and he and the review applicant stayed in his house. The two of them travelled to Ad Damazin for a trip to relax and spend time together. They stayed at a hotel. When asked if he could provide evidence of this he said he does not have evidence of where they stayed. The Tribunal asked if they visited any relatives during this trip, he said they do not have relatives in this place. They went for a holiday alone. They were there for about 10 days. He said they don't have photos of this trip. The Tribunal put to him it finds it strange they would have no photos of this trip given it was the first time they are spending time together since marriage. He then said they may have taken some photos on their phones but they change phones all the time so they don't have copies. The Tribunal put to the visa applicant that the review applicant's evidence of the trip to Damazin differed to his in that she said they travelled there to visit his relatives. In response he said they went on the trip first as a holiday and afterwards they visited relatives.
29. The Tribunal asked the visa applicant if the review applicant met any of his friends in Sudan. He said she met his close friend Mohammad Hasan, but this is the only person. He was aware of some of the names of her friends in Australia, including Naima and Christine. The Tribunal asked if he was aware of Hader Bensaul, who had provided a statement in support of the application. He said he has heard of this name but hasn't met him. The Tribunal put to him that this person indicated in his statement that he has spoken to him several times.
30. Regarding financial arrangements between them, the visa applicant said the review applicant has sent him \$200 on two occasions, but not for any specific purpose. He has sent presents to her. When asked what presents, he said he sent perfume to her and books, including love stories by Amer Hosny (*sic*), as well as religious books and an atlas. When asked if she sent him any gifts he said she has not because there are no people travelling from Australia to Sudan.
31. Regarding contact between them, the visa applicant said they use messenger and talk on the phone. They speak daily or every second day, for hours about various things, including their lives and future. He gave as an example of problems shared, the review applicant's issue with her friend Naima. She told him about this problem and he helped her to solve it. He was unable to provide detail about what the problem was or how he solved it. He also mentioned a problem he had with his friend Mohammad Hasan over a year ago when they stopped talking to each other. When asked to elaborate about this he said it was because he had been invited to something and Mohammad was not invited and it caused a problem between them. He did not explain how the review applicant helped to resolve it. When asked if they have disagreements or fights about anything, he said they do not.
32. *Evidence from the review applicant's mother*
33. The review applicant's mother told the Tribunal that she travelled to Sudan in November 2011 with her two daughters, the review applicant and Aya. She said she was aware of Aya's plan to marry her husband before they left Australia but she only knew about the

review applicant and visa applicant after they came to Sudan. She confirmed that the decision of the review applicant and visa applicant to marry was made by them and was not arranged by the families. The review applicant stayed with the visa applicant after the marriage, while she (the witness) stayed with her mother who is a direct neighbour. The witness said before the wedding they all stayed at a cousin, Adbul Latif's house, and then moved to her mother after the wedding.

34. Regarding the 2015 trip, the witness confirmed she travelled again with the review applicant and Amira and Fatima. They stayed with Abdul Latif again and then with her mother. They all travelled to Ad Damazin together, including the visa applicant's mother. The witness and review applicant's sisters stayed with some relatives and the review applicant and visa applicant stayed with other relatives, and they all travelled back to Khartoum together.
35. When asked what she wanted to tell the Tribunal about the relationship between the review applicant and visa applicant, the witness said they have been married according to religion, they made their own decision to do so. The reason the application was not made for 4 years was because they had difficulty saving the money for the application. They talk to each other all the time and she has observed the review applicant talking to the visa applicant, his mother and grandmother. For these reasons she believes the relationship is genuine.

36. *Evidence from review applicant's sister Aya Mohammad Idriss*

37. The witness said she was aware of the relationship between the review applicant and visa applicant before they travelled to Sudan in 2011. As sisters they had shared with each other their feelings about their respective boyfriends before they travelled to Sudan in 2011. They married on the same day. The review applicant went on a honeymoon after that with the visa applicant and then came back and stayed at Adbul Latif's house until she returned to Australia. The witness confirmed the reason for the late application was due to insufficient funds for the application. She believes they are a genuine couple because they talk almost every day. The witness said the review applicant has her own Facebook Account and also uses her Facebook account. They talk about future plans, where they will live. He talks to her about issues relating to his work and she talks about her life here. The witness confirmed she recently travelled to Sudan and saw the visa applicant in his village in Gerabin and from there they travelled to Ad Damazin. The witness confirmed that she has two children, aged 5 and 3 years. Her now ex husband is the father of her second child but not the first. The witness told the Tribunal she believes the relationship between the review applicant and visa applicant is genuine because they continue to talk all the time.

38. *Evidence from review applicant's father*

39. The review applicant's father confirmed that the visa applicant is the husband of the review applicant his daughter. The review applicant told him about the relationship after she went to Sudan for the first time in 2011 and they made their decision to marry. He told her to think about it and she did and came back and told him she wanted to marry. The witness confirmed that the reason for the delayed application was shortage of funds for the application. He wanted to help them to make the application sooner but he did not have the money. When asked why he believes the relationship is genuine and ongoing, he said marriage is very important for a girl. They talk daily and are convinced they can live together. He believes they are in a genuine relationship.
40. On 21 August 2017 the Tribunal wrote to the applicant and invited her comment on information that, if relied on, subject to her comments or response, would be the reason or part of the reason for affirming the decision under review. The Tribunal provided particulars of oral evidence given by the visa applicant and witnesses at the hearing that was inconsistent with her evidence and would contribute to reasons why the Tribunal would have

doubts about the reliability and credibility of hers and the visa applicant's evidence, which would lead it to affirm the decision under review.

41. On 4 September 2017 the Tribunal received a submission and response from the applicant to its invitation. The submission explained that when Aya told the Tribunal that she and the review applicant had discussed feelings about the visa applicant and her intention to marry him before travelling to Sudan in 2011 she was revealing something that was meant to be private and confidential between the sisters and that is why the review applicant did not mention it to the Tribunal and also why their mother said she had no knowledge about it. The evidence about the visit by the review and visa applicant to Ad Damazin was clarified and further explained and the Tribunal's consideration sought. Submissions were also made about the inconsistencies in the visa applicant's knowledge of the review applicant's study in Australia and her use of Facebook. The review applicant acknowledged that she has not to date notified Centrelink of the relationship as she did not know she needed to until he came to Australia, but intends now to do so. In support of these submissions statements from the review applicant, visa applicant and review applicant's sister were provided, together with a letter from the Darfur Community Social & Cultural Association Centre NSW confirming the review applicant's completion of an Arabic language course in November 2015 and several articles about arranged marriages and long distance relationships.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

42. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who an Australian citizen.
43. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

44. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The applicant and witnesses gave consistent oral evidence that the parties married in a joint ceremony with the review applicant's sister during their visit to Sudan in 2012, witness statements referred to the event, documentation of the marriage was provided with the application and a copy of a DVD was provided to the Tribunal at the hearing. On the basis of this evidence the Tribunal finds that the review applicant and visa applicant married in Sudan on 30 January 2012 and that they were both over the age of 18 years and available to marry. On the basis of these findings, it accepts the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

45. In forming an opinion whether they are in a married relationship and in considering whether they have a mutual commitment to a shared life as husband and wife to the exclusion of all others, whether their relationship is genuine and continuing, and whether they live together or do not live separately and apart on a permanent basis as required by s.5F(2)(b)-(d), the Tribunal has had regard to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3).
46. After careful consideration of all of the evidence before it, the Tribunal has reached the conclusion that it is not satisfied the visa applicant is the spouse of the review applicant within the meaning of s.5F of the Act. Below the Tribunal sets out its consideration of the evidence under the relevant headings of matters it must take into consideration under r.1.15A(3), and the reasons for its decision.

47. *Financial aspects of the relationship*

48. The Tribunal accepts that the applicants are living, and have always lived, in different countries, and their individual financial circumstances have been limited and constrained (accepting that the review applicant has mostly been a full time student throughout the relevant period and not engaged in full time employment and the visa applicant is a farmer with limited income). Therefore it places less weight on this aspect of the relationship, as it is not reasonable to expect them at this stage to have joint ownership of real estate or other major assets, joint liabilities, or owe legal obligations in respect of each other. It accepts that their explanation for the delay in lodgement of the application being lack of financial capacity for the application fee is consistent with their impecunious circumstances. Notwithstanding this, the review applicant gave evidence that she has twice sent the visa applicant remittances of AUD\$200, and they have exchanged some gifts between them. The visa applicant's evidence about this was not entirely consistent. He referred to the remittances but his evidence of the purpose of the money sent was inconsistent with the review applicant's as was his evidence regarding gifts exchanged. These inconsistencies lead the Tribunal to have some doubts about the truthfulness of the claims about moneys and gifts sent.
49. The limited financial aspects of the relationship presented does not strongly support the existence of a genuine and ongoing relationship but, as mentioned above, the Tribunal places little weight on this factor in its overall assessment of the relationship.

50. *Nature of the household*

51. As the parties live in different countries and have no children, they are not currently living together and cannot show evidence of joint responsibility for care and support of children. The Tribunal observes that the parties have in fact spent very little time physically together, being around 3 weeks straight after their marriage in January 2012 and less than 5 weeks at the end of 2014/early 2015. Both times the applicant travelled to Sudan, in 2012 and 2014/15 she travelled with her mother and a sibling. Noting that the review applicant and visa applicant are close relatives, it has some concerns about the nature of the time spent in Sudan and whether they in fact lived together during these periods as husband and wife.
52. They gave inconsistent evidence to the Tribunal about their trip to Ad Damazin on her second visit, and their evidence was also inconsistent with her mother's evidence about this trip. The review applicant initially told the Tribunal in her oral evidence that she and the visa applicant travelled to Ad Damazin to visit his relatives and stayed with his relatives, whereas he told the Tribunal they travelled there alone and stayed in a hotel. The review applicant's

mother told the Tribunal that they all travelled to Ad Demazin together but the review applicant and visa applicant stayed with different relatives. When invited to comment on these inconsistencies the applicants provided further explanations which the Tribunal has carefully considered but does not find convincing. Their inconsistent responses, together with the fact of their close family relationship, lead the Tribunal to doubt they were alone during this trip. It considers it more likely they travelled together as family and spent time with their family members. Given that this was the first time the review and visa applicant had been together since their marriage 3 years earlier, the Tribunal finds it surprising that they would not have spent any time alone together during her 5 week visit. The absence of other evidence of their time spent together, such as photos or receipts for any joint activities adds to the Tribunal's doubts about whether the review applicant and visa applicant were genuinely living and spending time together in this period.

53. On the material before it, the Tribunal finds that there is little evidence of household aspects of the relationship that supports the existence of a genuine spousal relationship. However, given that they are living in different countries and have spent little time together, it also gives this matter little weight in its overall assessment of the relationship.

54. *Social aspects of the relationship*

55. The Tribunal accepts that the review applicant and visa applicant are cousins and know, and are known to, each other's family members in that context. A number of statements in support of the existence of a genuine relationship, as well as oral evidence from the review applicant's parents and sister has been provided to the Tribunal. It accepts that the review applicant was familiar with and able to name the visa applicant's friends who provided witness statements, and he gave the names of two of her friends, demonstrating knowledge of each other's social circle.
56. The Tribunal acknowledges that a number of witness statements and Form 888 Statutory Declarations support the relationship, but it also notes that the statements have limited content, and none of the declarants have personal observations of the parties together, given they have spent so little time physically together. This limits the significance the Tribunal gives to this evidence, but it does acknowledge it as evidence of their presentation to friends and family as a couple. With regard to the review applicant's parent's evidence, the Tribunal acknowledges that they live with the review applicant and gave evidence of their personal observations that the review applicant and visa applicant are in regular contact with each other and committed to the relationship, however, given the visa applicant is also their nephew, it also takes into consideration the possibility they may have other motivations for their support for the application.
57. Ultimately the Tribunal accepts that evidence of social aspects of the relationship, in the sense of acknowledgement and social recognition by friends and family, has been provided which supports the existence of a genuine relationship.

58. *Nature of persons' commitment to each other*

59. The review and visa applicant met through their family relationship as children, although they were living in different countries. They met in person when the review applicant travelled to Sudan for the first time in November 2011, and claim to have decided to marry within weeks of this meeting. They married at the end of January 2012, in a joint ceremony with the review applicant's sister who also travelled with her to Sudan. The review and visa applicant spent the next few weeks together before the review applicant returned to Australia. Since that time, the review applicant only travelled to Sudan on one more occasion, at the end of 2014 for a period of 5 weeks. As mentioned above, she travelled the second time also with other family members and the Tribunal has doubts about whether the parties spent any of

this time alone together. The present application was not lodged until March 2016, some 4 years after their marriage. While the Tribunal acknowledges and accepts a reasonable and plausible explanation (lack of money for the application fee) has been given for the delay in making the application, it has the following concerns about the genuineness of the relationship arising from the evidence before it.

60. Firstly, it has concerns about the claimed inception and development of the relationship, and particularly the decision to marry so soon after they first physically met. The Tribunal's concerns are heightened by the inconsistency between the review applicant and her sister's evidence about whether she has planned to marry the visa applicant prior to travelling to Sudan or not. The subsequent delay of 4 years to make the partner application and 3 years before she made another visit to Sudan, and limited evidence of their ongoing contact during this period, is not demonstrative of commitment from the review applicant to the relationship.
61. Secondly, in the 5 years since their marriage they have spent very little time physically together. Their oral evidence relating to their knowledge of each other's lives and circumstances did not give the Tribunal the impression they were in as regular and daily contact as claimed and did not support the existence of a genuine and ongoing spousal relationship. The Tribunal was not convinced by their evidence that they draw emotional support and companionship from each other.
62. Thirdly, the Tribunal has concerns about the evidence of their communication and contact with each other while apart. The review applicant told the Tribunal she does not have her own Facebook account because she is not into social media, and for that reason uses her sister's Facebook account to access Facebook messenger. However, her sister told the Tribunal that the review applicant has and uses her own Facebook account, although she also confirmed her sister's use of her Facebook account for Messenger. The Tribunal requested the applicants to provide evidence of their Facebook accounts, but to date the review applicant has not done so. In response to the invitation to comment on her sister's contradictory evidence, the review applicant told the Tribunal that she no longer has a Facebook account and reiterated that she uses her sister's account to access Facebook messenger by which they communicate. However, the Tribunal doubts the truthfulness of this claim, given the applicants are of the age and generation that are likely to utilise Facebook and related social media, and particularly given the convenience of Facebook as a means of communication across distance.
63. Taking the above into account and considering all of the evidence cumulatively and holistically, the Tribunal is not satisfied the review applicant and visa applicant have established that they are in a genuine and continuing relationship or have a mutual commitment to a shared life together to the exclusion of all others or that they are not living separately and apart on a permanent basis.
64. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made and the time of this decision.
65. Therefore the visa applicant does not meet cl.309.211 or cl.309.221.
66. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

67. The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Meena Sripathy
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).